



H-2A Temporary Labor Certification Process

Workers Engaged in the Herding or Production of Livestock on the Range

2015 Herder Final Rule

Office of Foreign Labor Certification
Employment and Training Administration
U.S. Department of Labor

2015 Herder Final Rule

Background

- INA authorizes the Department of Homeland Security to permit admission of H-2A workers on a temporary or other seasonal basis where the Secretary of Labor certifies that:
 1. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and
 2. The employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed
- Current DOL regulations governing the H-2A temporary labor certification process were published in February 2010
(75 FR 6884)

2015 Herder Final Rule

Background

- OFLC has historically established variances or “special procedures” from the normal H-2A regulations for certain unique occupations
- However, DOL’s authority to issue such special procedures through administrative guidance letters (sheep/goat herding and range production of livestock) in the H-2A program was challenged in litigation
- In June 2014, the District of Columbia Circuit Court ruled that DOL’s administrative procedures constituted legislative rules subject to notice and comment under the Administrative Procedures Act (APA). *Mendoza v. Perez*
- To address this court action, DOL issued the 2015 Herder Final Rule on October 16, 2015, following a notice and comment rulemaking process

2015 Herder Final Rule

Major Reasons for Rulemaking

1. Address the APA violation issued by the D.C. Circuit Court
2. Establish a single regulatory framework covering all jobs related to the herding or production of livestock on the range
3. Establish a new wage setting methodology to address historical wage stagnation in these job opportunities
4. Improve conditions of employment for workers, such as housing standards, who are often located in remote isolated areas

2015 Herder Final Rule

Notice and Comment Rulemaking Timeline

Apr 15	DOL issued Notice of Proposed Rulemaking (NPRM) <i>(30-day comment period ending May 15th)</i>
May 5	Comment period extended based on public comments <i>(15-day extension ending June 1st)</i>
June – Sept.	Reviewed and addressed 506 unique comments addressing all aspects of the NPRM
Oct 16	DOL issued Final Rule <i>(30-day delayed effective date)</i>
Nov 16	Effective Date of Final Rule

2015 Herder Final Rule

Transition Provisions

Applications filed and certified prior to Nov. 16

- Certification remains valid
- Where applicable, employers will be required to adjust the offered wage to meet the requirements of the H-2A Herder Final Rule

Applications filed prior to Nov. 16 and pending on Nov. 16

- Chicago NPC will continue processing the application under the standards and procedures in effect at the time of filing
- Where applicable, employers will be required to adjust the offered wage to meet the requirements of the H-2A Herder Final Rule before a final determination is issued

Applications filed and certified on and after Nov. 16

- Chicago NPC will process the application under the full set of standards and procedures set forth in the H-2A Herder Final Rule

H-2A Herder Final Rule Briefing Outline

Section I Temporary Labor Certification Process

Scope and Eligibility Requirements

Key Terms and Definitions

Step 1: File H-2A Application and Job Order

Step 2: Conduct Recruitment of U.S. workers

Step 3: Obtain Temporary Labor Certification

Section II Offered Wage Requirements

Wage Requirements

Establishing the Monthly AEWR

Transition Schedule

Section III Range Housing Standards

H-2A Herder Final Rule Briefing



Briefing Section I

Temporary Labor Certification Process

General Provisions

Scope of H-2A Herder Final Rule

- 20 CFR 655.100 – 655.185 govern the certification of employers applying for temporary labor certification under the standard H-2A program
- 20 CFR 655.200 – 655.235 establish special variances for employers applying for temporary labor certification involving the herding or production of livestock on the range
- Where a specific variance from the standard H-2A regulations is not set out in the H-2A Herder Final Rule, the procedures set forth in the standard H-2A regulations apply
- Where a State sets employment standards applicable to herders that are higher (more protective) than those set in the H-2A Herder Final Rule, DOL intends that the State standards should apply. *See 29 U.S.C. 218(a)*

General Provisions

Eligibility Requirements

- Must be an individual employer, H-2A labor contractor, or agricultural association offering full-time work;
- Work must involve the herding or production of livestock;
- Work is performed on the range for the majority (meaning more than 50 percent) of the workdays in the work contract period;
- Work requires the workers to be on call 24 hours per day 7 days a week; and
- Nature of employer's need for the work must be seasonal or temporary

Important Note Regarding Temporary Need:

- ❖ Employment for the herding or production of sheep or goats must be no more than 364 calendar days
- ❖ Employment for the herding or production of any other livestock (e.g., cattle, horses) must be for no more than 10 months

General Provisions

Key Terms and Definitions

Herding

- Means activities associated with the caring, controlling, feeding, gathering, moving, tending, and sorting of livestock on the range

Livestock

- An animal species or species group such as sheep, cattle, goats, horses, or other domestic hooved animals raised on the range

Production of Livestock

- Means activities associated with the care or husbandry of livestock throughout one or more seasons during the year

General Provisions

Key Terms and Definitions

Production of Livestock (continued)

- Guarding and protecting livestock from predatory animals and poisonous plants;
- Feeding, fattening, and watering livestock;
- Examining livestock to detect diseases, illnesses, or injuries;
- Administering medical care to sick or injured livestock;
- Applying vaccinations/spraying insecticides on the range;
- Assisting with the breeding, birthing, raising, weaning, castration, branding, and general care of livestock; and
- Includes duties performed off the range (i.e., ranch work) that are closely and directly related to herding and/or the production of livestock

General Provisions

Key Terms and Definitions

Ranch work “closely and directly related” to the herding or production of livestock	<p>Non-exclusive examples include the following:</p> <ul style="list-style-type: none">▪ Inspecting and repairing fences used to contain the herd;▪ Assembling lambing jugs;▪ Cleaning out lambing jugs;▪ Feeding and caring for the dogs that the workers use on the range to assist with herding or guarding the flock;▪ Feeding and caring for the horses workers use on the range to help with herding or to move the sheep camps and supplies;▪ Loading animals into trucks for movement to range or market.
Ranch work <u>NOT</u> “closely and directed” related to the herding or production of livestock	<p>Non-exclusive examples include the following:</p> <ul style="list-style-type: none">▪ Working at feedlots;▪ Planting, irrigating and harvesting crops;▪ Operating or repairing heavy equipment;▪ Constructing wells or dams;▪ Digging irrigation ditches;▪ Applying weed control;▪ Cutting trees or chopping wood;▪ Constructing or repair bunkhouse or other ranch buildings;▪ Delivering supplies from the ranch to the herders on the range.

General Provisions

Key Terms and Definitions

What Constitutes the “Range”?

- Any area located away from the ranch headquarters used by the employer.
- The following factors are indicative of the range:
 - Involves land that is uncultivated;
 - Involves wide expanses of land, such as thousands of acres;
 - Located in a remote, isolated area; and
 - Typically range housing is required so that the herder can be in constant attendance to the herd

Important Note:

It is important to understand that no one factor is controlling and the totality of the circumstances is considered in determining whether the area where work is performed is considered range.

General Provisions

Key Terms and Definitions

What Does Not Constitute the “Range”?

- Ranch headquarters – including the ranch house, barns, sheds, pen, bunkhouse, cookhouse, and other buildings in the vicinity;
- Feedlots, corrals, or any area where the stock involved would be near ranch headquarters; and
- Any area where a herder is not required to be available constantly to attend to the livestock and to perform tasks, including but not limited to . . .
 - ensuring the livestock do not stray;
 - protecting them from predators; and
 - monitoring their health

H-2A Herder Final Rule Briefing




Briefing Section I

- Step 1: File H-2A Application and Job Order
- Step 2: Conduct Recruitment of U.S. workers
- Step 3: Obtain Temporary Labor Certification

STEP 1

File H-2A Application and Job Order

- Applications may be filed by an individual employer, H-2A Labor Contractor, or an association of agricultural employers
- Employer is not required to first file the job order 60 to 75 days before the start date of need with the SWA
-  Employer will submit the following documents no less than 45 days before the date of need directly to the Chicago NPC
 - Completed ETA Form 790 (job order);
 - Completed ETA Form 9142A and Appendix A (signed/dated); and
 - Attachment identifying, for each farmer/rancher, the names, physical locations and estimated start and end dates of need where work will be performed

Important Note:

H-2A Labor Contractors must submit all additional documentation (e.g., FLC Registration, surety bond, executed work contracts) as required 20 CFR 655.132

STEP 1

File H-2A Application and Job Order

- All employers qualifying under the H-2A Herder Rule are permitted to file H-2A applications and job orders covering multiple areas of intended employment in more than two contiguous states
- An association filing as a joint employer may submit a “master” H-2A application and job order identifying different dates of need for each of its employer-members
 - Chicago NPC will retain a copy of the job order on behalf of the association; and
 - Association is not required to resubmit its master job order during the calendar year, unless a modification is required by the Chicago NPC or requested by the employer

STEP 1

File H-2A Application and Job Order

- Filing electronically

Go to the iCERT System at <http://icert.doleta.gov>

- Filing by mail

U.S. Department of Labor
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court, Chicago, IL 60604- 2105
Attention: H-2A Program Unit: Range Livestock Application

Important Note:

Choose only one method of submission!

A duplicate application, where the employer or authorized attorney or agent files electronically and then submits that same application via U.S. mail, will not be accepted for processing. The Chicago NPC will process the first application filed, whether electronically or via mail.

STEP 1

File H-2A Application and Job Order

Tips for Preparing H-2A Applications and Job Orders

- Complete the ETA Forms 790 and 9142A legibly, clearly label all attachments, and sign/date the forms
- Describe in detail the herding or production of livestock duties to be performed on the range
- Where work will be performed off the range, all duties must constitute the production of livestock – including work that is closely and directly related to the herding and/or production of livestock
- Do not include catch-all statements such as “workers will perform other minor or incidental duties at the ranch”

STEP 1

File H-2A Application and Job Order

Tips for Preparing H-2A Applications and Job Orders

- Include a statement that workers will be . . .
 - on call for up to 24 hours a day, 7 days a week; and
 - spend the majority of the total workdays on the range
- If experience is required, specify the minimum number of months (not to exceed 6 months) that applicants must possess in similar occupations involving the herding or production of livestock on the range
- A requirement that applicants provide reference(s) to verify the experience is permissible

STEP 1

File H-2A Application and Job Order

Tips for Preparing H-2A Applications and Job Orders

- Make sure the offered rate of pay is equal to or higher than the current monthly AEW, agreed upon collective bargaining agreement, or minimum wage imposed by Federal or State law or judicial action
 - Currently, California and Oregon have applicable minimum wage laws covering these job opportunities
- State the frequency of pay to workers, which must be no less frequently than twice a month
- Identify all the tools, supplies, and equipment the employer will provide to the worker, without charge or deposit charge, required by law or by the nature of the work to perform the duties safely and effectively

STEP 1

File H-2A Application and Job Order

Tips for Preparing H-2A Applications and Job Orders

- Identify the type(s) of electronic communication device(s) workers will be provided, without charge or deposit charge, in case of an emergency during the period of employment
 - Examples include satellite phones, cell phones, wireless devices, or radio transmitters
- Where communication devices may not operate effectively, state in the job order the means and frequency of contact with the worker to monitor the worker's well-being
- Specify the location and type of range housing that will be available during the period of employment, as required by the ETA Form 790

STEP 1

File H-2A Application and Job Order

Tips for Preparing H-2A Applications and Job Orders

- For meals/water, specify the following, without charge or deposit charge, to the worker:
 - Three sufficient meals a day, or free and convenient cooking facilities with an adequate provision of food to prepare meals
 - At least 4.5 gallons of potable water, per day, for drinking and cooking, delivered on a regular basis, and additional water (may be non-potable) sufficient to meet the worker's laundry and bathing needs

Important Note:

Where a variance to delivering “potable” water is granted by the Chicago NPC, the job order must state that workers will be provided with an effective means to test whether the water is potable and, if not potable, the means to easily render it potable.

STEP 1

File H-2A Application and Job Order

Chicago NPC Processing Actions

- Upon receipt of the H-2A application and job order, the Chicago NPC shall . . .
 - Transmit a copy of the job order to the appropriate SWA for review
 - Review for obvious inaccuracies or omissions
 - Review for compliance with all applicable program requirements
- The Chicago NPC e-mail the employer and the employer's agent or attorney requesting correction of minor deficiencies
- Within 7 calendar days, the Chicago NPC will issue either a . . .
 - Notice of Deficiency identifying modifications needed to obtain regulatory compliance and appeal rights to the Department's Administrative Law Judge; or
 - Notice of Acceptance authorizing recruitment of U.S. workers

STEP 2

Conducting Recruitment of U.S. Workers


Recruitment Requirements

- Notice of Acceptance letter will contain steps for recruiting U.S. workers in addition to the recruitment conducted on your behalf by the SWA using the approved job order
- Conduct the following recruitment requirements before H-2A workers depart for the worksite or the 3rd calendar day before the start date, whichever is earlier:
 - Contacting, by mail or other effective means, any former U.S. workers from the previous year and solicit their return to the job; and
 - Conducting additional positive recruitment in accordance with instructions provided by the Chicago NPC

STEP 2

Conducting Recruitment of U.S. Workers

Recruitment Requirements (continued)

- Due to the unique nature of herding and production of livestock on the range, placement of local newspaper advertisements are not required
 - Chicago NPC will place the approved job order on the iCERT Public Job Registry at icert.doleta.gov
 - All approved job orders will remain active on the iCERT Job Registry and SWA until 50 percent of work contract period has elapsed
-  For associations filing “master” applications, the job order will remain active until 50 percent of work contract has elapsed for all employer-members on the job order

STEP 2

Conducting Recruitment of U.S. Workers

Submission of Recruitment Report

- Signed and dated by the employer or association filing as a joint employer
- Recruitment report contents include . . .
 - ✓ Name of each recruitment source;
 - ✓ Name and contact information of each U.S. worker (including former U.S. workers) who applied or was referred to your job;
 - ✓ For each U.S. worker who applied but was not hired, explain the lawful job-related reason(s) for not hiring the U.S. worker; and
 - ✓ A statement confirming whether former U.S. workers were contacted yet and, if so, by what means

Important Note:

An association must maintain a written recruitment report (as required by § 655.156) **for each individual employer-member** on the application or job order

STEP 3

Obtaining Temporary Labor Certification

- Remember to submit at least the following documents:
 - Signed and dated written recruitment report by the employer;
 - SWA certification of housing (*self-certification is permitted and discussed later in Section III*); and
 - Provide proof of workers' compensation insurance coverage in all states where work will be performed
- Failure to provide housing that complies with standards and/or proof of workers' compensation coverage will result in a denial determination

Important Note: If your current workers' compensation coverage will expire before the end of the certified work contract period, submit a signed and dated statement/ letter showing proof of intent to renew and maintain coverage. ***Information pages for future renewals are not sufficient proof of coverage***

STEP 3

Obtaining Temporary Labor Certification

- CO will make a determination either to grant the ETA Form 9142A no later than 30 days before the start date of need, as long as all regulatory requirements are met
- CO will notify employer in writing (*either electronically or by mail*) of the labor certification determination
- Employer may request an appeal or hearing of a partial certification or denial decision before the Administrative Law Judge within 7 calendar days of the determination date

STEP 3

Obtaining Temporary Labor Certification

- Where certification is granted, the employer or employer's agent or attorney will receive the following documents:
 - ✓ Final Determination letter
 - ✓ ETA Form 9142A (including Appendix A)
 - ✓ An invoice for payment of fees within 30 days
- Employer must continue to cooperate with the SWA by accepting referrals of eligible workers until the recruitment period (*i.e., 50 percent rule*)
- Employer must file the certified ETA Form 9142A and appropriate documentation to the USCIS Service Center (see www.uscis.gov for more information)

H-2A Herder Final Rule Briefing



Briefing Section II

Offered Wage Requirements

Offered Wage Rate

Wage Obligations

- An employer must offer, advertise in its recruitment and pay a wage rate that is at least equal to the highest of the following:
 - Monthly Adverse Effect Wage Rate (AEWR), as established under 655.211;
 - Agreed-upon collective bargaining wage; or
 - Applicable minimum wage imposed by Federal or State law or judicial action
- Employer must pay this wage (or higher) to both its H-2A workers and workers in corresponding employment at the time work is performed for every month of the job order period or portion thereof
- Wage shall not be based on commissions, bonuses, or other incentives, unless the guaranteed a wage equals or exceeds these requirements

Offered Wage Rate

Wage Obligations

Conditions for Prorating Worker Pay

- Employer may prorate the wage for the initial and final pay periods of the job order period where its pay period does not match the beginning or ending dates of the job order
- Employer may prorate the wage if an employee is voluntarily unavailable to work for personal reasons

Frequency of Pay

- Employer must state in the job offer the frequency with which the worker will be paid, which must be at least twice monthly
- Employers must pay wages when due

Offered Wage Rate

Establishing Monthly AEWR

- Eliminates the use of state-based wage surveys
- Establishes a national monthly AEWR for all range occupations
- Initial wage calculation will be based upon:
 - current Federal minimum wage (\$7.25/hour)
 - workweek of 48 hours
 - 4.333 weeks per month
- Calculation method is NOT tied to future increases in the Federal minimum wage
- Monthly AEWR will be adjusted annually based on the Employment Cost Index for wages and salaries (ECI)

Offered Wage Rate

Establishing Monthly AEWR

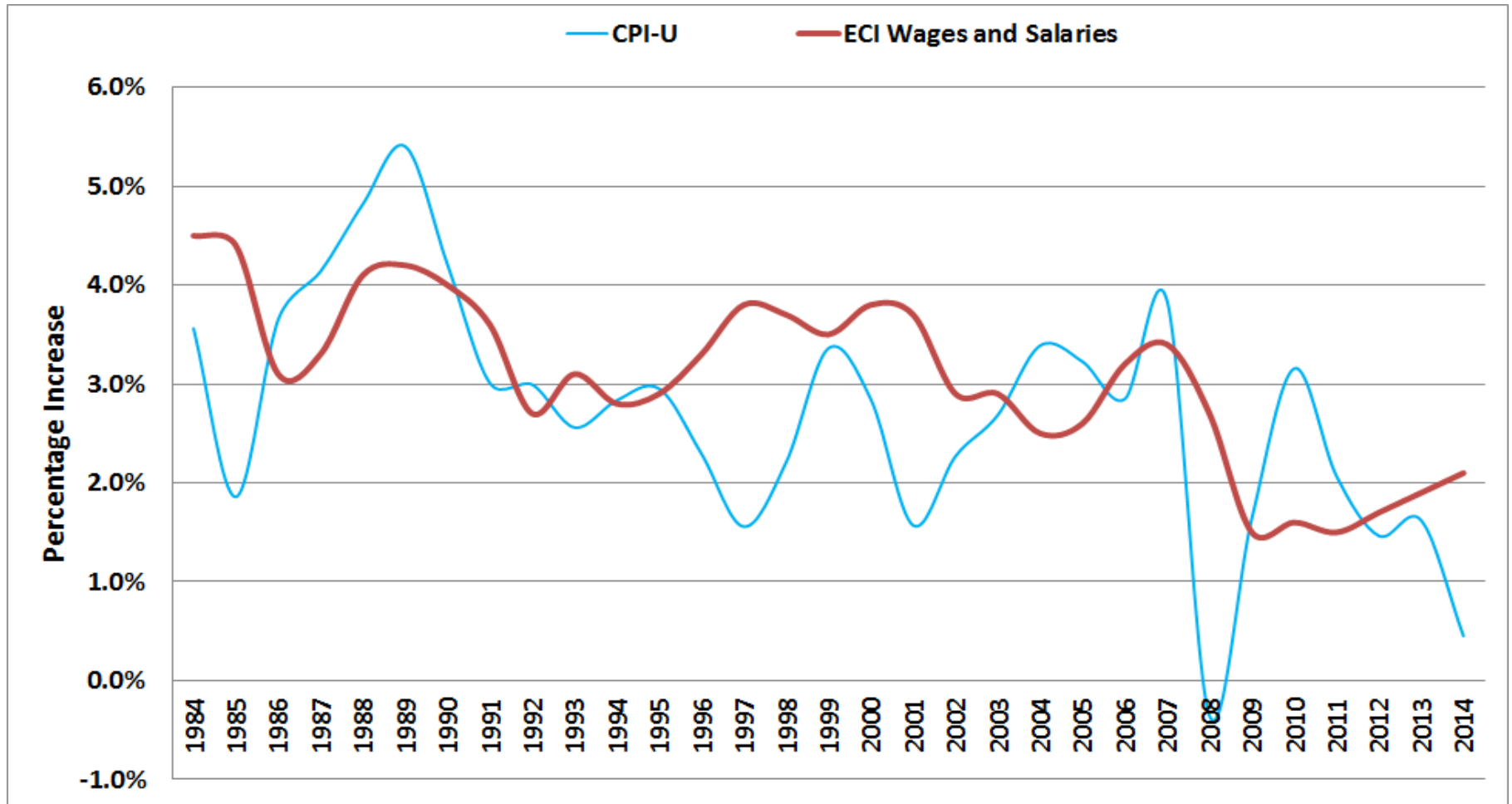
Description of the ECI – Wages and Salaries

- Data is prepared and published quarterly by the Department's Bureau of Labor Statistics
- Provides an indication of whether employment cost changes are rising or falling, thus measuring “inflationary” changes to worker wages and salaries
- Measures the 12-month percent change in wages and salaries paid by U.S. employers
- To adjust the monthly AEWR, the Department will use the ECI index published for the preceding October to October time period

Offered Wage Rate

Establishing Monthly AEWR

Comparing ECI vs. CPI-U, 1984 – 2014



Offered Wage Rate

Transition Schedule – Monthly AEWR

Year 1: November 16th, 2015 through Calendar Year 2016

Calculation:

$$80\% \text{ of } (\$7.25 \times 48 \text{ hrs} \times 4.333 \text{ wks}) = \text{\textbf{\$ 1,206.31}}$$

$$\textit{Prorated amount (Nov. 16 - 30)} = \text{\textbf{\$ 603.15}}$$

Year 2: Calendar Year 2017

Calculation:

$$90\% \text{ of } ((\$7.25 + \text{2016 ECI-Adjustment}) \times 48 \text{ hrs} \times 4.333 \text{ wks})$$

Hypothetical Scenario (assuming 2.0% ECI-Adjustment)

$$90\% \text{ of } ((\$7.25 + (\$7.25 \times 2.0\%)) \times 48 \text{ hrs} \times 4.333 \text{ wks}) = \text{\textbf{\$1,383}}$$

Adjusted Base \$ 7.40

Offered Wage Rate

Transition Schedule – Monthly AEWR

Year 3: Calendar Year 2018

Calculation:

100% of $((\$7.40 + 2017 \text{ ECI-Adjustment}) \times 48 \text{ hrs} \times 4.333 \text{ wks})$

Hypothetical Scenario (assuming 2.0% ECI-Adjustment)

100% of $((\$7.40 + (\$7.40 \times 2.0\%)) \times 48 \text{ hrs} \times 4.333 \text{ wks}) = \mathbf{\$1,568}$

Adjusted Base \$ 7.55

Forecasted Monthly AEWRs *(estimates only)*

2019	2020	2021	2022	2023	2024	2025
\$1,599	\$1,631	\$1,662	1,695	\$1,728	\$1,762	\$1,797

Offered Wage Rate


Important Reminders

- Department will publish monthly AEWR updates in the Federal Register, at least once in each calendar year
- Employer must adjust during a work contract and pay at least the highest of the monthly AEWR (upon publication) or the agreed-upon CBA or applicable minimum wage imposed by Federal or State law or judicial action at the time work is performed
- Currently, employers operating in California and Oregon have applicable minimum wage provisions that cover workers engaged in herding or production of livestock

Offered Wage Rate

Important Reminders

Hours and Earnings Statements

- Keep accurate and adequate earnings records and provide the worker on or before each payday with a statement of earnings
-  Keep daily records indicating whether the site of the employee's work was on the range or off the range
- Keep records of the reason(s) for the worker's voluntary absence for personal reasons where the employer's prorates the worker's wage
- Employer is exempt from recording . . .
 - hours worked each day;
 - time the worker begins and ends each workday; and
 - nature and amount of work performed

H-2A Herder Final Rule Briefing



Briefing Section III

Range Housing Standards

General Provisions

Scope and Inspection Requirements

- Range housing is housing located on the range that meets the standards sets forth under 20 CFR 655.235
- Housing standards cover the use of a mobile unit, camper, or other similar mobile housing vehicle, tent(s), and remotely located stationary structures along herding trails
- Use of range housing at a location other than the range is permitted only when the worker is performing work under the job order and workers must be permitted access to facilities in employer-provided housing (*e.g., bathrooms, cooking/cleaning facilities*)
- Otherwise, the worker must be housed in employer-provided housing that meets all the requirements of the normal H-2A program at 20 CFR 655.122(d)

General Provisions

Scope and Inspection Requirements

- SWA must inspect and certify that range housing is sufficient and meets all applicable standards
- Inspections must occur no less frequently than once every three calendar years after the initial inspection
- SWA will provide the employer with documentation certifying the housing for a period lasting no more than 36 months

Important Note:

If the SWA determines that your housing cannot be inspected within a 3-year timeframe or, when it is inspected, the housing does not meet all the applicable standards, the Chicago NPC may deny your H-2A application in full or in part or require additional inspections from the SWA in order to meet the regulatory requirement.

General Provisions

Scope and Inspection Requirements

Conditions for Employer Self-Certification of Housing

- Permitted when the employer received a SWA certification for the range housing unit within the past 36 months
- Employer must submit the following:
 - A copy of the valid SWA certification; and
 - A written statement, signed and dated, to the SWA and the Chicago NPC assuring that the range housing is available, sufficient to accommodate the number of workers being requested for certification, and continues to meet all applicable housing standards

General Provisions

Range Housing Standards

Housing Site

- Range housing sites must be well drained and free from depressions where water may stagnate

Housing Structure

- Must be structurally sound, in good repair, in a sanitary condition and provide shelter against the elements;
- Other than tents, must have flooring constructed of rigid materials easy to clean and prevent water entry;
- Must have at least one window that can be opened or skylight opening directly to the outdoors; and



Tents may be used only where the terrain and/or land use regulations do not permit the use of other more substantial housing

General Provisions

Range Housing Standards

Bathing, Laundry, and Hand Washing

- Bathing, laundry and hand washing facilities must be provided when it is not feasible to provide hot and cold water under pressure

Lighting

- In areas where it is not feasible to provide electrical service to range housing units, including tents, lanterns must be provided (*kerosene wick lights meet the definition of lantern*); and
- Lanterns, where used, must be provided in a minimum ratio of one per occupant of each unit, including tents

General Provisions

Range Housing Standards

Excreta and liquid waste disposal

- [Provision of Facilities](#) - Facilities, [including shovels](#), must be provided and maintained for effective disposal in accordance with applicable state or Federal requirements
- [Use of Pits for Disposal](#) - Must be kept fly-tight when not filled in completely after each use. The maintenance of disposal pits must be in accordance with state and local health and sanitation requirements.


Insect and Rodent Control

- Appropriate materials, including sprays, [and sealed containers for storing food](#), must be provided to aid housing occupants in combating insects, rodents and other vermin.

General Provisions

Range Housing Standards

Garbage and Other Refuse

- Durable, fly-tight, clean containers must be provided to each housing unit, including tents, for storing garbage and refuse;
 - Provision must be made for collecting or burying refuse (including garbage) . . .
 - At least twice a week or more often if necessary
-  Where the terrain in which the housing is located cannot be accessed by motor vehicle and the refuse cannot be buried, employer must provide appropriate receptacles for storing the refuse and for removing the trash when the employer next transports supplies to the location

General Provisions

Range Housing Standards

Food Storage

- When mechanical refrigeration is not feasible, employer must provide workers with another means of keeping food fresh and preventing spoilage (*e.g., butane/propane gas unit*)
- Other proven methods of safeguarding fresh foods, such as dehydrating or salting, are acceptable

Cooking and Eating Facilities

- When workers are permitted or required to cook in the unit, a space must provide adequate lighting and ventilation
- Wall surfaces next to food preparation and cooking areas must be of nonabsorbent, easy to clean material
- Wall surfaces next to cooking areas must be made of fire-resistant material

General Provisions

Range Housing Standards

Sleeping Facilities

- A separate comfortable and clean bed, cot, or bunk, with a clean mattress, must be provided for each person, except in a family arrangement



A variance can be requested where . . .

- Employer demonstrates it is impractical to provide a separate sleeping facility for the second worker to join the operation
- Variance must be used infrequently and the period of the variance will be temporary (*no more than 3 consecutive days*)
- Should the Chicago NPC grant the variance, the employer must supply a sleeping bag or bed roll for the second occupant free of charge or deposit charge

General Provisions

Range Housing Standards

Heating (For Safety and Health of Workers)

- Where the climate requires heated living quarters, all such quarters must have properly installed operable heating equipment that supplies adequate heat.



Where the climate is mild and the low temperature for any day is not reasonably expected to drop below 50 degrees Fahrenheit, no separate heating equipment is required

- However, employer must make available proper protective clothing and bedding, free of charge or deposit charge, to the workers

General Provisions

Range Housing Standards

Heating (Use of Stoves or Other Heating Sources)

- Any stoves or other sources of heat using combustible fuel must be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases
- If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there must be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove

General Provisions

Range Housing Standards

Heating (Proximity to Wall, Automatic Control, Tents)

- Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe must be made of fireproof material
- A vented metal collar must be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof
- When a heating system has automatic controls, the controls must be of the type that cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded
- A heater may be used in a tent if the heater is approved by a testing service and if the tent is fireproof

General Provisions

Range Housing Standards

Water supply (delivered on a regular basis)

- An adequate and convenient supply of water that meets the standards of the state or local health authority must be provided
- Water provided for use by the workers may not be used to water dogs, horses, or the herd
- Individual drinking cups must be provided

Important Note:

If an employer relies on alternate water sources to meet any of the workers' needs, it must take precautionary measures to protect the worker's health where these sources are also used to water the herd, dogs, or horses, to prevent contamination of the sources if they collect runoff from areas where these animals excrete.

General Provisions

Range Housing Standards



Water supply (continued)

- [For Drinking and Cooking](#) - Provide each worker at least 4.5 gallons of potable water per day
- [For Laundry and Bathing](#) - Provide a sufficient amount of water for laundry and bathing needs of each worker. This additional water may be non-potable, and an employer may require a worker to rely on natural sources of water for laundry and bathing needs if these sources are available and contain water that is clean and safe for these purposes.
- [Water Storage](#) - Containers for storing and using potable water must be provided and, in locations subject to freezing temperatures, containers must be small enough to allow storage in the housing unit to prevent freezing

General Provisions

Range Housing Standards

Requesting a Variance from Delivering Potable Water

- Workers are located in areas not accessible by vehicles
- Variance is requested at the time of filing the H-2A application with the Chicago NPC;
- Employer submits a written statement, signed and dated, attesting to the following:
 - Natural sources of water are identified and available that are potable or may be easily rendered potable in the area in which the housing will be located; and
 - Each worker will be provided with an effective means to test whether the water is potable and, if not potable, the means to easily render it potable
- Chicago NPC approves the variance

General Provisions

Range Housing Standards

Fire, Safety, and First Aid

- All units in which people sleep or eat must be constructed and maintained to applicable state/ local fire and safety law;
- No flammable or volatile liquid or materials may be stored in or next to rooms used for living purposes, except for those needed for current household use;
- Housing units for range use must have a second means of escape through which the worker can exit without difficulty;
- Tents are not required to have a second means of escape, except when large tents with walls of rigid material are used;
- Adequate, accessible fire extinguishers in good working condition and first aid kits must be provided

Helpful Resources

For more information and resources, please visit our implementation website at http://www.foreignlaborcert.doleta.gov/h-2a_herders.cfm

The screenshot shows the official website of the United States Department of Labor, Employment & Training Administration. The header is red with the department's name and logo on the left, and navigation links (A to Z, Site Map, FAQs, Forms, About DOL, Contact Us, Español) and a search bar on the right. Below the header is a dark red navigation bar with links to various sections: ETA Home, Find Job & Career Info, Business & Industry, Workforce Professionals, Grants & Contracts, TAA Program, Foreign Labor Certification (highlighted), Performance & Results, and Regions & States. The main content area has a breadcrumb trail: [ETA Home](#) > [Foreign Labor Certification](#) > H-2A Certification. On the left is a sidebar with the 'Office of Foreign Labor Certification' section containing links like 'About FLC', 'How do I...', 'Policies & Regulations', 'Program Debarments', 'OFLC Performance Data', 'Contact Information', and 'OFLC Help Desks'. Below this are 'Ombudsman Programs' (H-2A, H-2B) and 'Electronic Filing' (iCERIS Online Filing System, H-2A and H-2B Electronic Filing Resources, PERM Online Filing System). The main content area features a large banner for 'H-2A Herder Final Rule' with a home icon. Below the banner is a 'Helpful Links' section with a blue bar for 'Foreign Labor Certification'. A yellow bar announces the 'New H-2A Herder Handbook (Coming Soon)' with a 'NEW' star icon. Below this are buttons for 'Frequently Asked Questions', 'Regulations', 'Factsheets', and 'Forms'. To the right of these buttons is an 'Additional Resources' section. A yellow bar at the bottom of the main content area links to the 'iCERIS Portal System'. A 'Program Overview' section at the very bottom states: 'The Department of Labor (Department) has issued regulations governing the employment of foreign workers in jobs related to the herding or production of livestock on the range (the H-2A'.

UNITED STATES DEPARTMENT OF LABOR
Employment & Training Administration

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Enter Search Term Search

ETA Home Find Job & Career Info Business & Industry Workforce Professionals Grants & Contracts TAA Program Foreign Labor Certification Performance & Results Regions & States

[ETA Home](#) > [Foreign Labor Certification](#) > H-2A Certification

Office of Foreign Labor Certification

- About FLC
- How do I...
- Policies & Regulations
- Program Debarments
- OFLC Performance Data
- Contact Information
- OFLC Help Desks

Ombudsman Programs

- H-2A
- H-2B

Electronic Filing

- iCERIS Online Filing System
 - H-2A and H-2B Electronic Filing Resources
- PERM Online Filing System

H-2A Herder Final Rule

Helpful Links

[Foreign Labor Certification](#)

New H-2A Herder Handbook (Coming Soon) NEW

Frequently Asked Questions **Regulations**

Factsheets

Forms **Additional Resources**

iCERIS Portal System

Program Overview

The Department of Labor (Department) has issued regulations governing the employment of foreign workers in jobs related to the herding or production of livestock on the range (the H-2A

Helpful Resources

- For case inquiries related to your H-2A application, please contact the Chicago NPC at TLC.chicago@dol.gov
- For general program or regulatory inquiries on the H-2A Herder Rule, please contact the OFLC Ombudsman at H2A.Ombudsman@dol.gov

Disclaimer

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